hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2564 OF 2007

Vasant Nivrutti Gite and Anr. ... Petitioners

Versus

The Municipal Corporation of City of Nashik and Ors. ... Respondents

Mr. R.G. Ketkar for Petitioner.

Mr. M.L. Patil for R. No. 1.

Mr. S.G. Aney, Sr. Advocate with Mr. J.N. Pawar for R. Nos. 2 to 5.

WITH
WRIT PETITION NO. 2587 OF 2007

Shri. Prakash Mogal Londhe and Ors. ... Petitioners

Versus

Nashik Municipal Corporation and Ors....Respondents

Mr. V.A. Thorat, Sr. Advocate with Mr. Anilkumar Patil for Petitioners.

Mr. M.L. Patil for R. No. 1.

Ms. Deepa S. Matwankar for R. No. 2.

Mr. S.G. Aney, Sr. Advocate with Mr. J.N. Pawar for R. Nos. 3 to 5.

Mr. A.A. Kumbhakoni, Assoc. Adv. General with Mr. R.D. Rane, Government Pleader for R. No. 7.

WITH
WRIT PETITION NO. 2622 OF 2007

Shri. Sharad Kisanrao Koshire ... Petitioner

Versus

The Secretary, Urban Development Dept. & Ors. ... Respondents

Mr. S.G. Aney, Sr. Advocate with Mr.J.N. Pawar

for Petitioner.

Mr. A.A. Kumbhakoni, Assoc. Adv. General with Mr. R.D. Rane, Government Pleader for R. Nos. 1 and 4.

Mr. H.L. Patil for R. Nos. 2 and 3.

CORAM: F.I. REBELLO &
R.M. SAVANT,JJ.
DATED: APRIL 30, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule in all the Petitions.

. By consent of the parties, heard forthwith.

2. The challenge in this Petition is to the decision taken by the Presiding Officer dated 7.4.2007 nominating Sudhakar Badgujar, Mushir Sayyad, Sharad Kisanrao Koshire as the members of the Standing Committee. The Petitioner No. 1 belongs to Maharashtra Nav Nirman Sena (MNS) whereas Petitioner No. 2 belongs to Nationalist Congress Party (NCP).The Petitioners contend that the elected candidates of NCP are 17 and considering the total number of councillors which is 108, the second respondents ought to have nominated three members belonging to NCP. On the contrary only two members have been nominated. Thus the second respondents ignored the relative strength of the parties as was required by the provisions of Section 31A of the Maharashtra Municipal Corporations (Amendment)

Ordinance, 2007 which hereinafter shall be referred to as "Ordinance".

. The Petitioners in Writ Petition No. 2587 of 2007 are elected councillors of the Corporation. It is their case that the Respondents Sudhakar Badgujar (Independent), Smt. Shinde Jyoti ()BJP) and Shri. Sayyad Mushir (SP), have been illegally appointed as members of the Standing Committee in contravention of the amended Section 31A of the B.P.M.C. Act, 1949.

. Writ Petition No. 2622 of 2007 is filed by the petitioners who are elected representatives of Nashik Municipal Corporation.The Petitioner was elected as independent candidate.The Petitioner was appointed on the standing committee by the Shiv Sena a recognised political party against their quota of seats. It is Petitioners grievance that the letters/order dated 10.04.2007 addressed to the Deputy Secretary, Urban Development, Maharashtra State, is without authority of law and consequently liable to be set aside. By that order, the Government has stayed the Resolution No. 1 of Nashik Municipal Corporation, in its general body meeting held on 7.11.2007.

3. From the pleadings of the parties, the reliefs

sought for in the Petition are basically (a) challenging nomination of the respective councillors on the ground that nomination was contrary to Section 31A of the Ordinance and (b) the Resolution of the State Government suspending the resolution No. 1, passed by the Municipal Corporation of the city of Nashik in its general body meeting held on 7.4.2007 as being null and void.

. It may be mentioned that the general body of the Municipal Corporation of City of Nashik has 108 members on its general body. The Corporation has various committees of which, one is the standing committee having 16 members.

4. The Governor of Maharashtra promulgated the Maharashtra Ordinance No. 2/07 known as Maharashtra Municipal Corporations (Amendment) Ordinance, 2007. The relevant portion of Section 6 of the Ordinance by which Section 31A has been inserted in B.P.M.C. Act, 1949, reads as under :

> "6. After Section 31 of the Bombay Provincial Municipal Corporations Act, 1949, the following section shall be inserted,namely :
>
> "31A. (1) Notwithstanding anything

contained in this Act or the rules or bye-laws made thereunder, i the case of the following Committees, except where it is provided by this Act, that the appointment of a Councillor to any Committee shall be by virtue of his holding any office, appointment of Councillors to these committees, whether in regular or casual vacancies, shall be made by the Corporation by nominating Councillors in accordance with the provisions of sub section (2) :-

(a) Standing Committee; (b) Transport Committee; (c) Any special Committee appointed under section 30;

(d) Any ad hoc Committee appointed under section 31.

(2) In nominating the Councillors on the Committee, the Corporation shall take into account the relative strength of the recognised parties or registered parties or groups and nominate members, as nearly as may be, in proportion to the strength of such parties or groups in the Corporation, after consulting the Leader of the House,

the Leader of Opposition and the leader of each such party or group;

Provided that, nothing contained in this sub section be construed as preventing the Corporation from nominating on the Committee any member not belonging to any such party or group;

Provided further that, for the purpose of deciding the relative strength of the recognised parties or registered parties or groups under this Act, the recognised parties or registered parties or groups, or elected Councillors not belonging to any such party or group may, notwithstanding anything contained in the Maharashtra Local Authority Members Disqualification Act, 1986, within a period of one month from the date of notification of election results, form the aghadi or front and, on its registration, the provisions of the said Act shall apply to the members of such aghadi or front, as if it is a registered pre-poll aghadi or front.

(3) If any question arises as regards the number of Councillors to be nominated on

behalf of such party or group, the decision of the Corporation shall be final."

. At the meeting of the Corporation held for the purpose of nominating members to the standing committee, the members nominated were as under :

Shivsena	4
BJP	2
Congress I	3
NCP	2
MNS	2
BSP	1
SP	1
INDEPENDENT	1.

5. The first issue that will have to be decided is the interpretation of sub section (2) of Section 31A of the Ordinance with the provisos. A reading of Sub Section makes it clear that for nominating councillors on the committee,the Corporation shall take into account relative strength of the recognised parties or registered parties or groups and nominate members as may be in proportion to the strength of such parties or groups in the Corporation after consulting the leader of the house, the leader of the opposition and the Leader

of each such party or group. In other words, the representation on the standing committee is in the nature of proportional representation, proportionate to the number of seats held in the Corporation. The relative strength which has to be considered is of the recognised parties or registered parties or groups. The groups or Aghadi for the purpose of this sub section are as set out in the proviso (2). It is open to the recognised parties or registered parties or independent councillors, not belonging to any such party or group, notwithstanding anything contained in the Maharashtra Local Authority Members Disqualification Act, 1986 within a period of one month from the date of notification of election results to form an aghadi or front and on its registration, the provision of the said Act shall apply to the members of such aghadi or front, as if it is a registered pre poll aghadi or front. In other words, recognised or registered political parties can also come together; They can also come together with independents or independents themselves can come together and form aghadi or group as set out therein in which event such Aghadi or group depending upon their relative strength would also be entitled to nominate councillors on the committees. There can be different permutations and combinations. It is therefore, open to the various parties as well as independents to come

together.

. The statement appended to the Ordinance reads as under :

> "3. To ensure that all the recognised parties and groups in the Corporation are adequately represented in the Committees constituted under the Corporations Acts, the Government considers it expedient to amend these Acts to provide for the nomination of members of the Committees in proportion to the strength of the political parties of groups in the Corporation. "

. The first Proviso to Section 31.A(2) of the Ordinance sets out that nothing contained in this sub section be construed as preventing the Corporation from nominating on the Committee any member not belonging to any such party or group. In other words if the recognised, registered political party or Aghadi if it cannot be represented on account of less number of members, their members can also be nominated on the Committee.

6. With the above background, we may first consider how the relative strength for being represented would have to be worked out. As an illustration, if

the strength of General Assembly is 108 it will have to be divided by 16 members the strength of the standing Committee. This will work out to a quotient of 6.75. Then take the quotient of 6.75 and divide by the number of elected councillors to get the relative strength of the standing committee. If it be a fraction, then the fraction of 0.50 or more will be considered as one, the fraction of 0.49 will be ignored.

. In the instant case, as an illustration take the case of Shivsena, a recognised party. The number of councillors is 26. Divided by the quotient of 6.75 it comes to 3.85 Hence, the number of councillors on the standing committee for Shivsena would be 4. This will have to be similarly applied in the case of recognised or registered political parties or aghadies or front. Applying this formula for the standing committee of the Municipal Corporation of the City of Nashik, the recognised/registered parties like B.S.P., R.P.I., S.P. etc. since they do not have required quotient of 6.75 would not be entitled to a seat. Similarly though there are 10 independents as they have not constituted into an Aghadi, would also not be eligible for any seat though they together have a quotient to be represented if it was an as Aghadi or front.

7. The question before us is how are the remaining seats after nominating the elected councillors from the recognized, registered political parties to the standing committee, be filled in.

. The petitioners contend that a correct reading of the proviso would be that the seats must be allotted to the political parties based on the strength of their membership of the general body who did not have the necessary quotient. As an illustration, B.S.P. with three seats would be entitled to one seat, R.P.I. with two seats would be entitled to 1 seat and other two available seats will have to be settled between S.P., JP and P.W.P. which parties have one seat each.

. On the other hand on behalf of the Respondents, their learned counsel submits that said construction would be destructive of the language of the proviso. The Proviso would be an exception to sub section (2) as it provides for representation on the committees to any member not belonging to any registered recognised party or aghadi. It is therefore, submitted that the Corporation which will have to be nominate for the balance of the seats, from elected councillors from parties or independent councillor not already represented in terms of sub section (2).

8. In our opinion, the proper construction of sub section (2) and the two provisos, will be to first nominate members to the standing committee from amongst the registered parties, recognised parties or Aghadi or front which have the necessary quotient based on the relative strength of their membership of the general assembly. While so nominating it will be open by virtue of the proviso for a political party as long as the provisions of the Maharashtra Local Authorities Members Disqualification Act, 1976 are not attracted to nominate an elected councillor not belonging to the recognized or registered or group to the standing committee as set out in sub section (2). In such situation, as an illustration, Shivsena which was entitled to three seats could have nominated the Petitioner in Writ Petition No. 2622 of 2007. Shri.Sharad Koshire, an independent councillor as long as the Shiv Sena did not exceed its quota of seats based on their relative strength. A reading of the proviso by itself, would make it clear that the nomination can only be in respect of the parties or groups not already represented. In other words any other recognised, registered political party or Aghadi or front as independent councillor. If the argument of the Petitioners is to be accepted, then it can only be from the registered and recognised political party that nomination can be made. That

would defeat the very purpose of proviso which is in the nature of an exception to sub section (2). By virtue of proviso, in our opinion, the councillor to be elected can either be an independent or a member of any other registered or recognised political party not already represented. This no doubt would give advantage to the ruling group in the Corporation to fill in the seats from those who support them. In our opinion, this is a part of our democratic process and as such cannot be faulted with. It is therefore, not possible to accept the construction as urged on behalf of the Petitioners to construe the provisos as they have sought to contend. In our opinion, the language of the proviso is clear. It is only elected councillors if a party not already represented on the standing committee and belonging to a recognised or registered political party or group or independent councillor who can be nominated.

9. Considering this construction, the issue may now be answered. It is open to the Corporation to have nominated Shri. Sudhakar Badgujar, Mushir Sayyed and Sharad Koshire as either they were independents or belonging to parties which were not represented. The resolution to that extent could not have been faulted with. However, considering the quotient of the relative strength of the political parties,

N.C.P. having 17 seats divided by the quotient, would be entitled to 2.52 seats in other words 3 seats whereas they were allowed to nominate only for two seats. To that extent, the suspension of the resolution by the State Government which is subject matter of challenge in Writ Petition No. 2622 of 2007 cannot be really faulted. As the resolution is stayed, the standing committee could not function.

. In the light of our discussion, all these Petitions are disposed off by issuing the following directions :

(1) The action of the State Government suspending the execution of the resolution dated 10.4.2007, is upheld.

(2) In view of the fact that the resolution is upheld, the Corporation of City of Nashik is directed to commence the process of nomination to the standing committee afresh/denovo, in the light of what we have stated above.

. Rule made absolute accordingly. In the circumstances of the case, there shall be no order as to costs.

(R.M. SAVANT,J.) **(F.I.REBELLO, J.)**